

## Indonesian Criminal Law Procedure Paradigm Shift: Establishing the Virtual Criminal Court

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### ABSTRACT

*Indonesia, like other countries in the world, struggles as pandemic strikes. Such condition force every subject involved in the criminal justice system to administer technology to suppress the spread of the virus by social distancing. However, the sudden turn to employ modern technology has made the justice system moved into a new place called the virtual court. This pandemic situation also forces the shift of the conventional criminal court to the virtual criminal court paradigm. This article discusses the history of virtual criminal court in Indonesian Criminal Justice. This research employs a descriptive-normative method. The information collected by applying a historical approach and theoretical approach. Relevant data then studied and evaluated. The result then explained and described clearly. Indonesia is ready to implement virtual criminal justice. The shift from formal criminal court proceeding into virtual criminal court proceeding is applicable in Indonesia since 2002.*

**Keyword:** Pandemic, Criminal Law Procedure, Virtual Criminal Justice, Virtual Court, Criminal Law

## **ABSTRAK**

Indonesia, seperti negara di dunia lainnya, mengalami pandemi yang memaksa para pihak dalam sistem peradilan pidana untuk *social distancing* dalam rangka menekan persebaran virus dan menggunakan teknologi. Satu sisi, Indonesia dapat dikatakan belum siap menghadapi elaborasi antara teknologi dan aplikasi hukum yang masih perlu perbaikan. Hukum Acara Pidana di Indonesia telah mengalami rangkaian perkembangan begitu juga dengan peraturan perundang-undangan lainnya yang sangat sinergis dengan teknologi seperti Undang-Undang Informasi dan Transaksi Elektronik yang mampu memperluas alat bukti. Kini hampir setiap asas dalam hukum acara pidana mengalami perubahan, khususnya proses beracara yang dari model tradisional menjadi daring. Artikel ini membahas mengenai sejarah perkembangan hukum acara pidana yang fokus utamanya mengenai pergeseran paradigma berperkara pidana luring menjadi daring. Metode penelitian yang digunakan adalah normatif deskriptif, hasil pengumpulan informasi dan data kemudian dianalisis dan dijabarkan secara eksplanatoris. Kesimpulan penelitian ini antara lain, Indonesia telah menghadapi persidangan daring jauh sebelum pandemi yakni pada saat mantan Presiden BJ Habibie memberikan kesaksian pada sebuah kasus korupsi Bulog tahun 2002 silam sehingga dapat dikatakan Indonesia telah siap menerapkan proses peradilan pidana yang bersifat daring.

**Kata Kunci:** *Pandemi, Hukum Acara Pidana, Peradilan Pidana Daring, Peradilan Virtual, Hukum Pidana*

## Introduction

The year 2020 has marked by the outbreak of the Covid-19 Pandemic. Government took emergency measurement by employing health protocol globally. This condition has a consequence in which technology has huge role in life. Moreover, the development of technology use into the era of the Internet of Things has also dragged all dimensions of people's lives from trade, transportation, industry, health, education to social sectors. Government enforced the new law related to the emergency of pandemic thus has been passing number of regulations and enforce them (rechtoepassing or rechtshandhaving), one of which, is the regulation related to virtual court proceeding.<sup>1</sup>

The catastrophe of coronavirus pandemic marked as the drawback of everything yet in adverse, it gave rise to the development of law. This incident actually provides a strategy for law enforcement with a virtual trial. Witness hearing trial has shifted so that in the practice of criminal justice in certain cases witness testimony is no longer given directly (physically) which must be in court to give testimony.

Drawing from these conditions, a particular condition in Indonesia, on the practice of criminal procedure, a remote examination of witnesses has been introduced by utilizing multimedia technology known as teleconferencing.<sup>2</sup> A teleconference is a meeting held by two or more people through a telephone

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<sup>1</sup> Dewi Rahmaningsih Nugroho and S Suteki, "Membangun Budaya Hukum Persidangan Virtual (Studi Perkembangan Sidang Tindak Pidana via Telekonferensi)," *Pembangunan Hukum Indonesia* 2, no. 3 (2020): 292.

<sup>2</sup> Putu Anditya Darma Putra, "Legal Description of Witnesses in the Criminal Investigation via Teleconference New Normal Era," in *Proceedings of the 2nd International Conference on Law, Social Sciences and Education* (Singaraja, Bali, 2021), 97–99, <https://eudl.eu/pdf/proceedings/ICLSSE/2020>.

or network connection. The meeting can only use voice (audio conference) or use video (video conference) which allows conference participants to see each other. The first teleconference examination of witnesses was carried out in 2002. This is the first time the Supreme Court (MA) gave permission to former President BJ Habibie to give testimony via teleconference in the case of irregularities in Bulog's non-budgetary funds on behalf of the accused Akbar Tandjung.

Since the court gave the former President BJ Habibie a permission to have his testimony via teleconference in 2002, similar practices have started to be frequently used in trials.

The application of testimony via teleconference is a legal breakthrough in the criminal justice system in Indonesia even though testimony by teleconference has been used in trials, however in fact, it still raises debates in its implementation. This conflict arose, on the grounds that testimony by teleconference was not regulated in the Criminal Procedure Code. However, if we pay attention to the principles of fast and light cost criminal procedure law, the implementation of the examination of witnesses by teleconference fulfills these principles.<sup>3</sup> People of modern time mostly don't know about the history of teleconference in Indonesia.

Today, The trial held online via teleconference was carried out to implement the social distancing policy which was established to reduce the spread of the Covid-19 outbreak. Within the prosecutor's office, the implementation of this online trial is carried out by referring to the Attorney General's Instruction Number 5 of 2020 concerning the Policy for Implementing Tasks and Handling Cases during the

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<sup>3</sup> Ruth Marina Damayanti Siregar, "LEGALITAS KETERANGAN SAKSI MELALUI TELECONFERENCE SEBAGAI ALAT BUKTI DALAM PERKARA PIDANA," *Jurisprudence* 5, no. 1 (2015): 25–33.

Prevention Period for the Spread of Covid-19 in the Republic of Indonesia Prosecutor's Office on March 27, 2020, this instruction is accompanied by a letter Circular of the Attorney General of the Republic of Indonesia Number 2 of 2020 concerning Adjustment of Employee Work Systems in Efforts to Prevent the Spread of Coronavirus Disease (Covid-19) within the Republic of Indonesia Attorney General's Office.

As stated in the Circular of the Attorney General of the Republic of Indonesia No B-049/A/Suja/03/2020 of 2020 concerning Optimization of the Implementation of Duties, Functions and Authorities Amidst Efforts to Prevent the Spread of Covid-19 (hereinafter abbreviated as SEJA No. Number B-049/Suja/03/2020) regarding several important points that need to be considered in providing handling of criminal cases during the Covid-19 period.

The points contained in the circular include:

- (1) Completing the ongoing trial (especially cases where the defendant has detention status) and it is no longer possible to extend detention,
- (2) Endeavoring to conduct online trials via video or more commonly referred to as a teleconference or live streaming, in which the trial process is coordinated with the Head of District Courts and Heads of Detention Centers or Prisons,
- (3) Trial postponements are made for criminal cases which allow the detention period to be extended, as well as the implementation of phase II for cases that were not detained or cases that had a time limit for detention with due observance of the emergency response period

during the Covid-19 period in their respective trial areas<sup>4</sup>.

The Supreme Court quickly responded by implementing a long-distance online criminal case court policy or teleconference during the period of preventing the spread of Covid-19 is a form of safety protection for judicial officials, justice seekers, and also court users (defendants, public prosecutors, advocates, witnesses, experts, visitors trial).

In addition, so that the Supreme Court and the judicial bodies under mentioned regulation could still provide case handling services to stakeholders. These measurement objective is to reduce significant time efficient. The defendants will still get the fulfillment of their legal rights while undergoing the examination process at the court level.<sup>5</sup>

The Indonesian law scholar and law practitioner are unaware of the teleconference history administered by the Indonesian Criminal Justice System before the pandemic. This raises question among them. **This article discusses the history of virtual criminal court in Indonesian Criminal Justice. Is Indonesia prepared enough to conduct virtual criminal court?**

## **Methodology**

This research employs a descriptive-normative method. The source of the data collected is mainly originated from law books, articles, magazines, and reports. The information extracted then studied historically. Theoretical approach also applied to evaluate the coherence that correspond to the axiom. The analysis is conducted using

<sup>4</sup> Nur Akmal Razaq, "LEGALITAS PERSIDANGAN DARING DI MASA PANDEMI COVID - 19 DALAM PESPEKTIF HUKUM PIDANA," *Inovasi Penelitian* 1, no. 6 (2020): 1228-29.

<sup>5</sup> Wahyu Iswantoro, "PERSIDANGAN PIDANA SECARA ONLINE, RESPON CEPAT MA HADAPI PANDEMI COVID-19," *Selisik* 6, no. 1 (2020): 62.

qualitative method. The data collected are broken into relevant sub-topics with specific classification to discuss, describe the facts and connect them with selected theories. The final result then connected into one clear explanation.

## **Discussion**

Society is subject to change because people also contingent. Borrowing Cicero's maxim *ubi societas ibi ius*, the law also changes whenever people shift their paradigm. Shifting means going to somewhere, moving from one place to another, positioning ourselves in a different condition. The context of the paradigm shift in Indonesian criminal justice is under the specific framework of from the conventional to being technologically advanced.

This article offers endeavour to shed light on the preparedness of the virtual criminal court in Indonesia by historical approach and theoretical approach.

### **Probing Indonesian Virtual Criminal Court using Friedman's View**

Friedman's legal system theory states that there are three elements that make up the legal system, namely the legal substance, legal structure, and legal culture. In legal practice, fundamentally (grounded dogmatic) the cultural dimension should precede other dimensions, because in that cultural dimension a set of values is stored (value system).

Furthermore, this value system becomes the basis for policy formulation and is then followed by law making as juridical signs and code of conduct in everyday people's lives, which are expected to reflect the noble values possessed by a nation concerned. Of the three elements that form the legal system according to Friedman, "legal culture is what precedes the other two elements".

### **Virtual Criminal Court is Against Article 153 (3) jo Article 160 of the Criminal Procedure Code, a Misunderstanding**

Based on data released by the Supreme Court, at this time (until 18th of May 2020) a total of 824 cases have been carried out using the e-Litigation application. General Courts throughout Indonesia are currently serving 382 active cases through the e-Litigation application, or around 47% of the total active cases in the Supreme Court's e-Litigation service. Meanwhile, Religious Courts throughout Indonesia are currently serving 412 active cases through the e-Litigation application, or around 50% of the total active cases in the Supreme Court's e-Litigation service. At the State Administrative Court, it is recorded that only served 30 active cases or about 3% of all active cases in the e-Litigation service of the Supreme Court<sup>6</sup>. Even though it has been made easy to do it in a virtual way, there are several obstacles, both substantive and technical, namely:

#### **1. Substantive Constraints:**

- a. Based on Article 20 of Perma No. 1 of 2019, electronic trials for civil, religious, military and state administrative cases are not mandatory in nature, but require the approval of the plaintiff and defendant. This means that an electronic trial cannot proceed independently without the consent of the litigants.
- b. The implementation of electronic trials is still relatively held private because access to follow the trial process electronically is only given to the litigants and is not yet open to public access. This

<sup>6</sup> Anggita Doramia Lumbanraja, "PERKEMBANGAN REGULASIDAN PELAKSANAAN PERSIDANGAN ONLINE DI INDONESIA DAN AMERIKA SERIKAT SELAMA PANDEMI COVID-19," *Crepidio* 02, no. 01 (2020): 50.

contradicts Article 153 paragraph (3) of the Criminal Procedure Code in conjunction with Article 13 paragraph (1) of the Law on Judicial Powers which requires that court hearings be open to the public, except for cases of decency; accused of children; or other statutes specify. The relatively closed electronic trial is also not in accordance with Article 195 of the Criminal Procedure Code in conjunction with Article 13 paragraph (2) of the Law on Judicial Powers. Based on these provisions, court decisions are only valid and have legal force if they are pronounced in open sessions for the public. Even according to Article 153 paragraph (4) of the Criminal Procedure Code in conjunction with Article 13 paragraph (3) of the Law on Judicial Powers, failed to fulfill these provisions and resulting in the verdict being null and void. The implementation of the trial which is open to the public is important because it is part of the transparency and efforts to carry out the due process of law. With transparency, the public can supervise the proceedings of the trial, observe and observe legal facts presented in the trial, and prevent the occurrence of judicial mafia.<sup>7</sup>

c. The trial is also constrained by the problem of proof even though proof has a very important meaning to prove the defendant is guilty or not. In this regard, Article 183 KUHAP regulates that a judge may not impose a

sentence on a person unless, with at least two valid pieces of evidence, the judge is convinced that a criminal act has actually occurred and that the defendant is guilty of committing it. However, in practice, as stated by Attorney General Sanitiar Burhanuddin, the evidence presented is often not clearly accessible. In addition, the defendant could not be presented or confronted directly at the trial, but instead went through trial while remaining in the correctional facility. As a result, it is difficult for public prosecutors, judges and legal advisors to gather facts through questions to the accused.

2. Technical Constraint:

a. With regard to human resources and infrastructure. In connection with this, in his brief study of "Organizing Online Trials in the Middle of the Covid-19 Pandemic in 16 District Courts", the Ombudsman found the potential for maladministration, namely the existence of protracted delays in conducting electronic trials. This is indicated by the finding of the lack of resources for information and technology (IT) officers. As a result, electronic trial preparation is slow, especially if there are technical obstacles in the middle of the trial. The ombudsman also found the unclear timing of the trial, limited facilities and infrastructure such as limited courtrooms with teleconferencing devices, unstable internet networks so that the electronic trial process was delayed for a long time. Other technical constraints are limited control of technology by judges, poor coordination between parties,

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<sup>7</sup> LBH Jakarta, "TELECONFERENCE DALAM SIDANG PEMERIKSAAN," August 22, 2013,  
<https://www.bantuanhukum.or.id/web/teleconference-dalam-sidang-pemeriksaan/>.

legal advisors are not side by side with the accused, and cannot ensure that witnesses and defendants are under pressure or lies.<sup>8</sup>

According to the author's perspective, the legality of trials carried out online is already strong, because it is supported by the existence of the Criminal Code, Circular, and Instruction of the Attorney General, also contained in SEMA, so that other judicial institutions and the Supreme Court must be able to take positive lessons from the enactment and implementation. This policy, and this online trial are clear evidence of the Supreme Court's accountability to the public regarding the provision of fast, simple and accurate services without delaying or hindering the public in obtaining and accessing justice.<sup>9</sup>

However, change is inevitable. Indonesian Criminal Court System is subject to change to the following SEMA. However, the shift from being traditional to technologically advanced is not a sudden turn.

### **History of Teleconference In Court Trials**

Teleconferencing is a meeting held by two or more people done over a telephone or network connection. The meeting can use voice (audio conference) or audio and video simultaneously (video conference) which allows conference participants to see and hear each other what is being discussed as in an ordinary meeting. Teleconferencing is one proof of technological developments that cannot be denied. With this media

we can communicate audio-visual with someone without any obstacles.

This is because teleconferencing can be used in any situation without knowing the boundaries of space, distance and time. Talking about teleconference media, this has invited a long debate among legal practitioners. There are parties who support and agree with the media and there are parties who oppose and reject it firmly.

It has to be in our knowledge that teleconferencing was once carried out in the Bali Bombing court case with the defendant Ali Gufron alias Muhkлас which was held by means of a teleconference based on the testimony of a wan min bin wan from Malaysia. The reason for employing teleconference in this case is practical, this is because the witness does not need to come to Bali just to give testimony, thus saving time and money. Those who contravened the presence of the teleconference media stated that giving testimony via teleconference was considered invalid because they were not present at the actual trial and the provisions regarding the media were not clearly regulated in the Criminal Procedure Code.<sup>10</sup>

One of the evidences regulated in the criminal procedure law is witness testimony. The importance of this witness testimony is reflected in Law No. 8 of 1981 concerning Criminal Procedure Law which is described in article 184 of the Criminal Procedure Code, which shows that the witness's testimony ranks first among the list of other legal evidence. Evidence for witness testimony so that it can be assessed as valid evidence, the testimony must be declared in court. This is in accordance with the

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<sup>8</sup> Dian Cahyaningrum, "PERSIDANGAN SECARA ELEKTRONIK PADA MASA PANDEMI COVID-19," *Info Singkat* 12, no. 14 (2020): 3-5.

<sup>9</sup> Razaq, "LEGALITAS PERSIDANGAN DARING DI MASA PANDEMI COVID - 19 DALAM PESPEKTIF HUKUM PIDANA."

<sup>10</sup> Putu Elik Sulistyawati and I Ketut Sujana, "PEMANFAATAN TELEKONFEREN SEBAGAI ALAT BANTU PEMBUKTIAN DALAM PERSIDANGAN PIDANA," *Kertha Wicara* 2, no. 1 (2013), <https://ojs.unud.ac.id/index.php/kerthawicara/article/view/4671>.

affirmation of Article 185 paragraph (1) of the Criminal Procedure Code. Thus, a witness's testimony that contains an explanation of what he himself heard, seen or experienced himself regarding a criminal event, can only be valuable as evidence if the witness' testimony is stated in a court session. However, in stating witness testimony that must be presented in court, currently raises new problems among legal experts regarding whether in stating witness testimony that is delivered directly at court proceedings must be physically or can be stated non-physically through several electronic media.

Along with the development of society in the field of communication and information technology, more and more people are using this technology in their daily lives. So that the understanding of the law, including the law of evidence, in the practice of criminal justice in Indonesia is also growing, especially in providing remote witness testimony in court sessions using multimedia virtual meeting. The use of teleconferences has not been specifically regulated in the Criminal Procedure Code. However, the evidentiary law that concerns proof with electronic media is regulated in several regulations.

One of them can be seen from the addition of evidence in criminal acts of corruption in the form of information spoken, sent, received with optical devices as outlined in the Corruption Eradication Law, then giving testimony through electronic media has been stated in Law Number 31 of 2014 regarding the second amendment of Protection of Witnesses and Victims Regulation, and regulations regarding electronic evidence which are briefly stipulated in the Law on Electronic Information and Transactions. The first teleconference examination of witnesses was used on July 2, 2002. The Supreme Court (MA) ordered the first time to the former president Habibie, who had testified

directly from Hamburg, Germany at the South Jakarta District Court (PN) via teleconference.

Habibie's testimony is important, because Habibie was a key witness to the misuse of Bulog funds during his reign. Two ministers during the Habibie era, Akbar Tandjung as the former State Secretary and Rahardi Rammelan, the former Minister of Industry and Trade (Pjs) Kabulog, are defendants in a corruption case in Bulog. At that time, Habibie gave testimony from the Indonesian Consul General's office in Hamburg, Germany. After Habibie's testimony at the South Jakarta District Court, it was the turn for the Central Jakarta District Court to ask for information from witnesses in the case of serious human rights violations in East Timor (Timtim). For reasons of safety and efficiency, some witnesses were forced to give their testimony through a glass screen. They testified from Dili, while the defendant sat in the chair of the Central Jakarta District Court<sup>11</sup>.

The presence of laws and regulations regarding witness testimony via teleconference is a milestone in addressing the examination of witnesses by teleconference to provide some solution to the void in criminal procedural law. This is a form of legal breakthrough along with the development of information technology in society. The situation in Indonesia is also in line with the research results conducted by Susan Ledray, which states that the Montgomery County Circuit Court in Maryland has been using web-based video conferencing technology for remote witness testimony over the past few years.

The web-based video conferencing service allows for real-time

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<sup>11</sup> Lulu Azmi Sharfina, "KEABSAHAN KESAKSIAN (KETERANGAN SAKSI) YANG DISAMPAIKAN SECARA TELECONFERENCE DI PERSIDANGAN," *Skripsi*, 2018, 17-19.

communication by several participants through the use of a computer or mobile device containing a camera, microphone, and speakers. Montgomery County uses WebEx, because it provides choice and the courts need to do what it does. Apart from real-time audio and video, participants can share desktop screens and documents, chat using whiteboard features. The recording feature could save the entire video or audio calls. Maryland courts anticipate the use of this technology to a greater extent in the future by the public, lawyers and technology acceptance in court.<sup>12</sup>

### **The Adapting Process: Virtual Criminal Procedures and Related Regulations**

The Indonesian Criminal Court shift's preparedness is measured by two aspects. *Firstly*, there are no overlapping regulations, or at least there is no legislation that bans or obstruct the use of technology in the criminal court. *Secondly*, it is enforceable.<sup>13</sup>

The examination of witnesses through teleconference in Indonesia is not yet regulated in the Criminal Procedure Code. The only provisions that explicitly regulate teleconferences are contained in jurisprudence. Indonesia, judge-made-law has been adopted as "persuasive precedent" or only as a source of law in a formal sense. Indonesia also does not recognize the principle of precedent (not as the binding force of the precedent), in fact, it does not recognize *stare decisis* or the principle of *stare decisis et quita non move* (namely a legal principle which states

that lower courts must follow higher court decisions).

In order to conform the teleconference media in examination at trial to be valid, the panel of judges needs to issue a special decision for the implementation of the teleconference. This means that the process of giving testimony via teleconference cannot be automatically used as a direct applicable rule. Teleconferences were not regulated in the Criminal Procedure Code because legislators were certainly not aware of the rapid revolution in information and communication technology that the Criminal Procedure Code was unable to anticipate.

### **Virtual Criminal Court is not Against Article 153 (3) jo Article 160 of the Criminal Procedure Code**

The teleconference is not in accordance with the provisions of Article 160 paragraph (1) letter a and Article 167 of the Criminal Procedure Code which requires the physical presence of witnesses in the courtroom.<sup>14</sup> However, the Panel of Judges with the benchmarks of the provisions of Article 28 paragraph (1) of Law no. 4 of 2004 (now regulated in Article 5 paragraph (1) of Law No. 48 of 2009 concerning Judicial Powers) requires Judges as law and justice enforcers to explore, follow, have deep understanding to conduct the material fact finding in criminal law, formal aspects should be abandoned selectively.<sup>15</sup>

Therefore, judges' active role is needed according to Article 5 paragraph

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<sup>12</sup> Ruth Marina Damayanti Siregar, "LEGALITAS KETERANGAN SAKSI MELALUI TELECONFERENCE SEBAGAI ALAT BUKTI DALAM PERKARA PIDANA," *Naskah Publikasi*, 2014, 5–6.

<sup>13</sup> Reny Okprianti, "PERANAN POLITIK HUKUM PIDANA DALAM PEMBENTUKAN ATURAN HUKUM PIDANA," *Varia Hukum* 39 (2018): 100–102.

<sup>14</sup> Dian Erdianto and Eko Soponyono, "Kebijakan Hukum Pidana Dalam Pemberian Keterangan Saksi Melalui Media Teleconference Di Indonesia," *Law Reform* 11, no. 1 (2015): 67, <https://doi.org/10.14710/lr.v1i1.15756>.

<sup>15</sup> Hock Lai Ho, *The Legal Concept of Evidence (Stanford Encyclopedia of Philosophy)* (Metaphysics Research Lab, Stanford University, 2015), <https://plato.stanford.edu/entries/evidence-legal/>.

(1) of Law Number 48 of 2009 concerning Judicial Power to make new legal discoveries (*rechtfinding*) to achieve material truth and justice in accordance with the expectations of society. Therefore, the authors agree with the conduct of teleconferences in court examinations for law enforcement provided that they do not conflict with norms and public order prevailing in society. Thus, it is necessary to immediately make amendments to the current Criminal Procedure Code (KUHAP) related to the regulation of the use of teleconferences in the examination of criminal cases in court, so that in the future it will no longer be a polemic for law enforcers because the legal certainty has been guaranteed.

The use of teleconferences in the examination of criminal cases in court according to the author does not violate general principles applicable to criminal procedural law. These principles namely:

1. The principle of justice is fast, simple and light cost. The principles of fast, simple and inexpensive trial are contained in Article 50 of the Criminal Procedure Code (KUHAP), besides that it is also contained in Article 4 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power.

a. Fast Principle

The definition of "fast trial" is the benchmark used based on the size of the time limit for the judicial process. The judicial process starts from preliminary examination, investigations, prosecutions and examinations before the court. In the Criminal Procedure Code (KUHAP) it is explicitly stated in terms of limiting the duration of the arrest, which is one time twenty-four hours. Furthermore, regarding the period of detention, the Criminal Procedure Code (KUHAP) has stipulated a period

of detention along with a limitative extension of detention.

This can be observed from the provisions concerning the time limit for detention of an investigator to be 20 (twenty) days. This detention can be extended by the investigator plus 30 (thirty) days with the permission of the head of the local District Attorney. Furthermore, the public prosecutor has the authority to detain the defendant within 30 (thirty) days which can be extended for 30 (thirty) days, with the permission of the Chairman of the local District Court.

Furthermore, the District Court Judge has the authority to detain the defendant for a maximum of 30 (thirty) days, extendable for 60 (sixty) days with the permission of the Head of the High Court. Then the High Court Judge has the authority to detain the defendant for a maximum of 30 (thirty) days, extendable for 60 (sixty) days with the permission of the Chief Justice of the Supreme Court. Furthermore, the Supreme Court Judge can detain the defendant for a maximum of 30 (thirty) days, extendable for 50 (fifty) days with the permission of the Chief Justice of the Supreme Court.

b. Simple and Light Cost Principle

The simple principle means the administration of justice in an integrated manner, the judicial process is convoluted or complicated yet orderly, also the judicial process is not delayed. The simple meaning, of course, can be interpreted in a narrow way as not complicated. The use

of audio-visual (teleconference) to present witnesses to the trial did not make the trial process complicated because the use of this technology was very easy so that the trial could proceed as usual, there were no procedures that had to be extended, and certainly the process was kept simple.

The principle of inexpensive proceeding here means that the judicial process must be carried out at minimum cost but the material fact finding could be carried out properly. The principle of inexpensive can also mean that the cost of administering justice is reduced in such a way that it is affordable for justice seekers, in order to avoid wasting costs.

The use of teleconferences allows the parties being examined, be they witnesses and/or defendants, to remain in their respective places, and will not interfere with the activities of each party. For example, witnesses and/or defendants are abroad, witnesses and/or defendants do not need to be brought to trial directly in Indonesia, it is enough just to use a teleconference so that the trial can continue as it should, without the need to pay a great expense and simply only takes short time.

## 2. The principle of examination in the presence of the defendant

One of the principles in criminal procedural law adhered to by the Criminal Procedure Code (KUHAP) is that the trial is conducted in the presence of the defendant. This principle is contained in the provisions of Article

154, Article 155 and so on in the Criminal Procedure Code (KUHAP).<sup>16</sup>

The use of teleconferences in the examination of criminal cases in court makes things easier, less wordy and short. With this condition, it is clear, teleconference in court can realize the principles of fast, simple and inexpensive trial. So that witnesses and / or defendants, especially the defendants, have an obvious fate, no longer be swayed by a lingering sense of uncertainty due to the accusations being accused of him gradually haunting him without a final settlement. The use of teleconference media as a means of giving testimony has fulfilled several conditions<sup>17</sup>:

- a. Oral statement of a person before a court session (in accordance with Article 185 paragraph 1) KUHAP)
- b. With an oath in advance (in accordance with Article 275 paragraph (2) in conjunction with Article 303 HIR and Article 160 paragraph (3) in conjunction with article 185 paragraph (7) of the Criminal Procedure Code).
- c. Regarding certain events that have been heard, seen and experienced (nontestimonium de auditu) - (in accordance with Article 1 paragraph (27) of the Criminal Procedure Code)

It is undeniable that the existence of teleconference examinations has embodied the principle of a fast, simple and inexpensive trial, where the process of case examination in court becomes easier, not long-winded and short, because the trial does not have to be

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<sup>16</sup> Norika Fajriana, "TELECONFERENCE DALAM PEMERIKSAAN PERKARA PIDANA DI PENGADILAN," *Badamai Law* 3, no. 1 (2018): 64-66.

<sup>17</sup> Erdianto and Soponyono, "Kebijakan Hukum Pidana Dalam Pemberian Keterangan Saksi Melalui Media Teleconference Di Indonesia."

postponed continuously for various reasons and of course it is lighter. In terms of cost, the use of the teleconference application which is free and easy to operate by anyone.

In addition, the existence of an examination by means of a teleconference does not contradict the principle of examination by the presence of the defendant. Teleconference is legally considered as the same as normal examination which is carried out in person orally and transparently, the only difference is the presence of the position of defendant during testimony, is virtual.

In an ordinary examination, a defendant is presented physically (face to face) in a courtroom, so it is different from an examination using a teleconference, where the defendant is not physically present but only virtually while the defendant is physically in another room or place. In the future, law enforcers, especially judges, can apply a tradition of progressive thinking so that decisions can reflect a sense of justice and truth for society.

Consequently, the judges should stick to Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power so that they are able to follow the legal values that develop in society, because this has become the obligation of the judge. So that every piece of evidence presented at trial must be examined by a judge, even though it must deviate from the general principles that apply in criminal procedural law.<sup>18</sup>

### **The Paradigm Shift of Criminal Procedures**

Indonesia has been practicing authentic, actual, direct criminal proceeding since Dutch's colonial era that began in the early 18<sup>th</sup> century. The aftermath of independence had

influenced the establishment of the Indonesian Criminal Procedure Code. There are no virtual criminal court practices until the Habibie's Era in 2002.

The practice of criminal justice in Indonesia has been adopting the conventional practice of Indonesian Criminal Procedure Code for more than 40 years since the enactment of Law Number 8 of 1981 concerning the Criminal Procedure Code. This law is formed by the Indonesian nation to replace the Het Herzeine Inlandsch Reglement (Staatblad Year 1941 Number 44) which is a product of colonial law, through this law it has provided protection for human rights as well as the dignity of the entire Indonesian nation without distinguishing them into groups such as those that applied to the colonial law.

Indonesia had never intended to preparing the virtual criminal court until they had to ask Habibie in 2002. Everything starts with a minor amendment to fit people's needs. Therefore, the substantial changes to the Criminal Procedure Code were not about virtual criminal court procedures.

There had been many developments in the social life of the community as time passes by which will be closely related to legal needs, and the Criminal Procedure Code (KUHAP) is seen as no longer suitable with "changes in the state administration system and legal developments in society so that it needs to be removed and replaced with the virtual criminal procedure paradigm. In the general explanation of the Draft Criminal Procedure Code, a number of clues indicate that the Criminal Procedure Code is out of date. First, the Criminal Procedure Code is still unable to meet legal needs in society, especially in the practice of handling criminal cases, which is the duty of law enforcers to resolve cases properly and fairly. Second, legal developments and changes in the political map coupled with global

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<sup>18</sup> Fajriana, "TELECONFERENCE DALAM PEMERIKSAAN PERKARA PIDANA DI PENGADILAN."

economic, transportation and technological developments also influence the meaning and existence of the substance of the Criminal Procedure Code.

Indonesia struggled in applying criminal procedure code because the irregular regulations. There are procedural rules outside of the Criminal Procedure Code, such as Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 which one of the provisions has expanded the evidence. Another example is the Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended by Law Number 20 of 2001 which provides several specific rules in carrying out the process of eradicating criminal acts of corruption. Another example is the diversion arrangement in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System as a form of settlement of crimes committed by children.<sup>19</sup> Disuniformity has been the source of the problem when employing changes in criminal procedure code.

Indonesia has several trial methods, namely Examination of Criminal Cases at Courts Examination of criminal cases in court hearings includes regular case examination, brief case examination and rapid case examination. Furthermore, it is explained that examination of criminal cases is quickly divided into light criminal investigations and examination of cases in traffic violations. Examination of criminal cases using short examination procedures, namely for criminal cases of crimes and violations but not included as regulated in Article 205 of the Criminal Procedure Code and cases which according to the public prosecutor the evidence includes easy application of the law with a simple

<sup>19</sup> Apri Listiyanto, "Pembaharuan Sistem Hukum Acara Pidana," *Rechtsvinding*, 2017, 7.

nature. Quick examination of criminal cases is designated for minor crimes, namely cases punishable by imprisonment or imprisonment of a maximum of three months and/or a maximum fine of seven thousand and five hundred rupiah and minor humiliation except as provided for in paragraph 2 of this section as provided in Article 205 paragraph (1) of the Criminal Procedure Code.

Furthermore, regarding the traffic case examination procedure, it is explained that what is examined according to this event is a certain violation of traffic regulations. There is no limit to what cases are examined normally. When viewed from the perspective of the prevailing laws, then this ordinary examination has the most extensive regulations. The following is an examination of a criminal case in a court session with an ordinary procedure, which includes<sup>20</sup>:

- a. Summoning Stage
- b. Opening Stage and Identity Checking of the Defendant
- c. Stages of reading the indictment
- d. Exception
- e. The Evidence Stage
- f. Reading of Requisitor (Requisitoir)
- g. Defense (Pleidoi)
- h. Replication and Duplication Stage
- i. Decision

These stages should be carried out with direct meetings (physical). But with the emergence of a virus that has emerged in various parts of the world, one of whom Indonesia has begun to change all legal regulations in Indonesia. This virus emerged caused the original level with face-to-face must now move using teleconference technology. The

<sup>20</sup> Ismail Suriani, "PENGARUH PANDEMI COVID-19 TERHADAP PELAKSANAAN PERSIDANGAN PERKARA PIDANA DI PENGADILAN," *Criminal Case*, no. September (2020): 787-800.

implementation of the virtual criminal trial through teleconference is seen as the policy of social distancing and physical distancing, to reduce the rate of development of Covid-19 pandemic. In the prosecutor's office, the trial using a teleconference facility refers to the instructions of the Attorney General of the Republic of Indonesia Number 5 of 2020 concerning the policy of carrying out assignments and handling of cases during the preventive period of the spread of Covid-19 in the Attorney General of the Republic of Indonesia on March 27, 2020.

The instructions were accompanied by a circular letter of the Attorney General of the Republic of Indonesia Number 2 of 2020 concerning the Adjustment of Employee Work System in Efforts to Prevention Coronavirus Disease In the Prosecutor's Office of the Republic of Indonesia. The spread of Pandemic Corona Virus Disease (Covid-19) until now has not yet subsided the government has implemented a new standard namely the new normal.

In order to prevent Covid-19, the Supreme Court (MA) has issued a Circular No. 1 Year 2020 concerning Guidelines for Implementation of Tasks During the Prevention Period of Distribution of Corona Virus Disease (Covid-19) in the Supreme Court and the Justice Agency below it (SEMA No. 1 of 2020). SEMA No. 1 of 2020 was then changed with SEMA No. 2 of 2020 and changed again with SEMA No. 3 of 2020. The regulation regulates judges and judicial apparatus can carry out an official duties by working at home or residence (work from home, abbreviated as WFH).

WFH includes the implementation of the case examination trials carried out electronically through teleconference. The policy to conduct electronic trials was strengthened by the existence of a cooperation agreement between the Supreme Court, the Attorney General's

Office, and the Ministry of Law and Human Rights which agreed to organize trials electronically for criminal acts during Pandemic Covid-19. With SEMA No. 1 year 2020 along with its changes and cooperation agreements between the Supreme Court, the Attorney General's Office, and the Ministry of Law and Human Rights agreed to organize electronic trials, the trial of electronically has been carried out in the Pandemic Covid-19 period.

The Attorney General's Office noted that from March 30 to July 6 2020 there were 176,912 general criminal cases that had undergone electronic trials. Meanwhile, the KPK was recorded to have held 40 cases electronically <sup>21</sup>. However, if abstracted, the virtual criminal trial still leaves problems, therefore in this paper these problems can be classified into two types:

First, juridical-procedural problems, this is based on the insufficient view of the legal umbrella that currently exists, because it has not regulated in Law no. 8 of 1981 concerning Criminal Procedure Law (KUHAP);

Second, the juridical-substantive problem, this specifically refers to the application of a virtual criminal trial for the type of case that does not allow a trial in absentia in an ordinary hearing and a brief examination. In addition to being regulated in the Criminal Procedure Code Article 154 paragraph (4) of the Criminal Procedure Code, it is also a principle in criminal law.

Third, the technical-empirical problem refers to the real conditions in the field, such as the instability of the internet and the inadequacy of proof during virtual criminal court proceedings.

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<sup>21</sup> Cahyaningrum, "PERSIDANGAN SECARA ELEKTRONIK PADA MASA PANDEMI COVID-19."

## Conclusion

Indonesia is ready to administer the virtual criminal court system permanently. The solid reasons for the answer are. **First**, Indonesia has been practicing teleconference since 2002. Therefore it reflects the experience that had shaped the criminal justice system specifically to hear the testimony of Habibie regarding a big criminal case at the time. **Second**, Indonesia has adequate regulations that support the establishment of virtual criminal court. Pandemic is just another stage to emphasize the permanent and thriving establishment of the Indonesian virtual criminal court.

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